



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 98

[Docket No. USCG-2011-0088]

RIN 1625-AB63

Bulk Packaging to Allow for Transfer of Hazardous Liquid
Cargoes

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend its regulations concerning the transfer of hazardous materials to and from portable tanks on vessels. The Coast Guard proposes to expand the list of portable tanks approved for hazardous material transfers to include IMO Type 1 and IMO Type 2 portable tanks, UN portable tanks, and Intermediate Bulk Containers. In addition, the Coast Guard proposes to expand the list of allowed hazardous materials. The proposed amendments would provide greater flexibility in the selection and use of portable tanks and would allow for the transport of additional hazardous materials. The proposed effect would be to eliminate the need to obtain special permits or Competent Authority Approvals to use IMO

Type 1 or IMO Type 2 portable tanks, UN portable tanks, or Intermediate Bulk Containers, or to transport hazardous materials not on the list.

DATES: Comments and related material must be submitted on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.].

ADDRESSES: You may submit comments identified by docket number USCG-2011-0088 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

(4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request

for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

Collection of Information Comments: If you have comments on the collection of information discussed in section VI.D of this NPRM, you must also send comments to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget. To ensure that your comments to OIRA are received on time, the preferred methods are by e-mail to oira_submission@omb.eop.gov (include the docket number and "Attention: Desk Officer for Coast Guard, DHS" in the subject line of the e-mail) or fax at 202-395-6566. An alternate, though slower, method is by U.S. mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

Viewing incorporation by reference material: You may inspect the material proposed for incorporation by reference at U.S. Coast Guard Headquarters, 2100 Second Street SW, Washington, DC 20593-0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-372-1419. Copies of the material are available as indicated in the "Incorporation by Reference" section of this preamble.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Lieutenant Elizabeth Newton, Office of Hazardous Material Standards, Coast Guard; telephone 202-372-1419, e-mail Elizabeth.J.Newton@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

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I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

A. Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2011-0088), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG-2011-0088" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions"

column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments.

B. Viewing comments and documents

To view comments as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box type "USCG-2011-0088" and click "Search." Click the "Open Docket Folder" in the "Actions" column. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

C. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

D. Public meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the docket using one of the methods specified under ADDRESSES. In your request, explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

II. Abbreviations

AAHMS	Associate Administrator for Hazardous Materials Safety
CFR	Code of Federal Regulations
DHS	Department of Homeland Security
DOT	Department of Transportation
FR	<u>Federal Register</u>
HMR	Hazardous Materials Regulations; 49 CFR Parts 171-180
IBC	Intermediate Bulk Container
IM	Intermodal
IMDG	International Maritime Dangerous Goods (code)
IMO	International Maritime Organization

MPT	Marine Portable Tank
NLS	Noxious Liquid Substance
N.O.S.	Not otherwise specified
OSV	Offshore supply vessel
PHMSA	Pipeline and Hazardous Materials Safety Administration
§	Section symbol
UN	United Nations
U.S.C.	United States Code

III. Background

The Coast Guard proposes to amend 46 CFR subparts 98.30 and 98.33, which contain regulations concerning the transfer of hazardous materials to and from portable tanks on vessels. Portable tanks are primarily used by offshore supply vessels (OSVs) to transport hazardous materials to and from offshore platforms involved in the exploration and production of oil and natural gas.

In a 1990 rulemaking titled "Portable Tanks for the Transportation of Bulk Hazardous Materials by Vessel" (55 FR 37406), the Coast Guard allowed the use of Intermodal (IM) 101 and IM 102 portable tanks for the transfer of hazardous materials. The specifications for these tanks can be found in the Department of Transportation's (DOT) Pipeline and Hazardous Materials Safety Administration (PHMSA) regulations at 49 CFR parts 171-180, referred to as the Hazardous Materials Regulations (HMR).

Since the Coast Guard's 1990 rulemaking, PHMSA has aligned its HMR regulations to incorporate changes made to

the International Maritime Organization's (IMO) International Maritime Dangerous Goods Code¹ (IMDG Code) for the construction and use of portable tanks. The IMDG Code applies to all vessels, including U.S. vessels, on international voyages. The portable tanks constructed to IMDG Code requirements are known as "UN portable tanks," and include IMO Type 1 and IMO Type 2 portable tanks. As of January 1, 2003, the IMDG Code requires all newly manufactured portable tanks to be designed, constructed, and approved in conformance with the requirements of UN portable tanks.

Portable tank manufacturers reacting to the harmonization of PHMSA's HMR regulations with the IMDG Code, which includes the requirement that all portable tanks be UN portable tanks, are no longer manufacturing IM 101 and IM 102 portable tanks. As a result, we are initiating this rulemaking to harmonize Coast Guard regulations at 46 CFR subparts 98.30 and 98.33 with PHMSA's HMR regulations and international standards for vessels operating domestically by allowing UN portable tanks to be used in transporting hazardous materials.

We are also initiating this rulemaking in response to a suggestion from industry that the Coast Guard allow

¹ See IMDG Code, 2010 Edition, Incorporating Amendment 35-10, Chapter 4.2, Section 4.2.0.1.

Intermediate Bulk Containers (IBCs) to be used to transport hazardous materials. The Coast Guard is proposing to amend the applicability sections in 46 CFR subparts 98.30 and 98.33 to allow the use of IBCs in transporting hazardous materials on board vessels, but with specific restrictions as to what types of IBCs could be used to ensure safety.

The Coast Guard would allow existing IM 101 and IM 102 portable tanks at 46 CFR subparts 98.30 and 98.33 to continue to be used for the lifetime of the tank provided that they continue to meet periodic test and inspection requirements. By allowing the use of IMO Type 1 and IMO Type 2 portable tanks, UN portable tanks, and IBCs, we are eliminating the need for vessel owners to apply to PHMSA's Associate Administrator for Hazardous Materials Safety (AAHMS) for a special permit or a Competent Authority Approval to use these tanks.

The intended effect of these proposed changes would provide industry with additional options for the selection of portable tanks or IBCs that could be used for transfers of hazardous materials between cargo tanks and portable tanks.

In this rulemaking, the Coast Guard is also proposing to amend the list of hazardous materials currently approved for transport in portable tanks in 46 CFR subpart 98-30.

Currently, shippers wishing to transport a product not on this list must apply to PHMSA's AAHMS for a special permit or Competent Authority Approval. By expanding the list of authorized hazardous materials, the Coast Guard would eliminate the need for prior individual authorization before these additional hazardous materials could be transported in a portable tank or IBC.

IV. Discussion of Proposed Rule

The Coast Guard proposes to amend the titles of subparts 98.30 and 98.33 to include IBCs and read "Subpart 98.30 -- Portable Tanks and Intermediate Bulk Containers" and "Subpart 98.33 - Portable Tanks and Intermediate Bulk Containers for Certain Grade E Combustible Liquids and Other Regulated Materials."

The Coast Guard also proposes to make conforming changes throughout subparts 98.30 and 98.33 to include IBCs in each instance that the current regulations mention portable tanks. See proposed amended §§ 98.30-9, 98.30-10, 98.30-11, 98.30-12, 98.30-14, 98.30-17, 98.30-19, 98.30-21, 98.30-23, 98.30-25, 98.30-29, 98.30-31, 98.30-33, 98.30-35, 98.33-3, 98.33-7, 98.33-9, 98.33-11, 98.33-13, and 98.33-15.

A. Subpart 98.30—Portable Tanks and Intermediate Bulk Containers

The Coast Guard proposes to redesignate current sections in subpart 98.30 to make room for new proposed sections, as noted in the chart below.

Original Section Heading and Number	Redesignated Section Heading and Number
Section 98.30-2: Definitions	Section 98.30-3: Definitions
Section 98.30-3: Vessels carrying MPTs	Section 98.30-4: Vessels carrying MPTs
Section 98.30-4: Vessels carrying portable tanks other than MPTs	Section 98.30-5: Vessels carrying portable tanks other than MPTs
Section 98.30-5: Materials authorized for transfer to and from a portable tank	Section 98.30-7: Materials authorized for transfer to and from a portable tank
Section 98.30-6: Lifting a portable tank	Section 98.30-9: Lifting a portable tank or IBC
Section 98.30-7: Smoking	Section 98.30-10: Smoking
Section 98.30-8: Gaskets and lining	Section 98.30-11: Gaskets and lining
Section 98.30-9: Stowage of portable tanks	Section 98.30-12: Stowage of portable tanks and IBCs
Section 98.30-10: Pipe connections, and filling and discharge openings	Section 98.30-13: Pipe connections, and filling and discharge openings
Section 98.30-11: Cargo pumps	Section 98.30-14: Cargo pumps
Section 98.30-13: Ground connection	Section 98.30-15: Ground connection
Section 98.30-14: Requirements for ships carrying NLSs in portable tanks	Section 98.30-16: Requirements for ships carrying NLSs in portable tanks and IBCs
Section 98.30-15: Leakage containment	Section 98.30-17: Leakage containment
Section 98.30-17: Qualifications of person in charge	Section 98.30-18: Qualifications of person in charge

Sec. 98.30-1: Applicability.

This section would be amended to allow the use of IMO

Type 1 and IMO Type 2 portable tanks, UN portable tanks, and IBCs for use in transferring hazardous materials on board vessels. This section would also be amended to delete reference to "liquid" from the term "hazardous materials" to be consistent with how the term is used elsewhere in subpart 98.30.

In addition, this section would be amended to eliminate the restriction of transporting "liquefied gas" in a portable tank because the Coast Guard proposes in 49 CFR 98.30-7 to allow the transport of "liquid nitrogen."

This section would also be amended to update the reference for PHMSA, which was formerly known as the Research and Special Programs Administration, and to clarify that these rules would be applicable to portable tanks authorized for use under a special permit or Competent Authority Approval issued by PHMSA's AAHMS in accordance with 49 CFR part 107, subpart H.

Sec. 98.30-2: Incorporation by Reference.

This new section would be added to incorporate by reference the IMDG Code. The material proposed for incorporation by reference appears in 46 CFR 98.30-3 and 98.30-5. The IMDG Code identifies the characteristics of the newly approved UN portable tanks and allows for the older tanks approved prior to January 1, 2003, to continue

to be used provided that they are found to meet the periodic inspections and test provisions. The harmonization of the Coast Guard regulations with the IMDG Code would ensure that U.S.-flagged vessels continue to be in compliance, if and when older tanks do not pass periodic inspections and test provisions and need to be replaced with the newly approved UN portable tanks.

Sec. 98.30-3: Definitions.

Proposed redesignated § 98.30-3 would be amended to add three new terms to define the types of tanks that can be used in accordance with 46 CFR 98.30-1. These definitions are "IMO Type 1 portable tank and IMO Type 2 portable tank," "UN portable tank," and "IBC". Also, the definition of "IM 101 portable tank and IM 102 portable tank" would be revised to describe tanks that were manufactured on or before January 1, 2003. As discussed above, IM 101 and IM 102 portable tanks are no longer constructed. However, IM 101 and IM 102 portable tanks that were manufactured and approved by PHMSA before January 1, 2003, may continue to be used for the lifetime of the tank. These tanks provide a level of safety equivalent to other portable tanks and are safe to use as long as they meet the requirements for continued use under the HMR at 49 CFR 173.32.

Sec. 98.30-5: Vessels carrying portable tanks other than MPTs.

This section would be amended to allow the carriage of IMO Type 1 and IMO Type 2 portable tanks and UN portable tanks on board a vessel for use in the transfer of certain hazardous materials. Hazardous materials are authorized, in accordance with 49 CFR 173.32, to be transferred to a portable tank only if the portable tank is authorized to carry the hazardous material in accordance with the HMR or under the terms of a special permit or Competent Authority Approval issued by PHMSA's AAHMS.

Existing IM 101 and IM 102 portable tanks provide a level of safety equivalent to other portable tanks authorized for the transfer of hazardous materials and can be used, provided these tanks meet certain periodic test and inspection requirements in accordance with the HMR at 49 CFR part 180, subpart G.

Sec. 98.30-6: Vessels carrying IBCs.

This section would be added to describe the types of IBCs the Coast Guard would allow for the carriage of certain hazardous materials on board a vessel, and to make clear the requirements the IBCs would have to meet to gain approval from the Coast Guard. We would allow the use of an IBC only if the IBC is equivalent to, or greater in

standards than, an authorized IMO Type 1 or IMO Type 2 portable tank, or a UN portable tank.

Sec. 98.30-7: Materials authorized for transfer to and from a portable tank.

This section would be amended to replace the term "ORM-E" with the terms "hazardous substance" and "hazardous waste" as described in 49 CFR 171.8. The term "ORM-E" is outdated and is no longer used by PHMSA.

This section would be amended to allow the use of IMO Type 1 and IMO Type 2 portable tanks and UN portable tanks for the transfer of materials permitted under this section, and to clarify that a portable tank authorized in this section can serve as a substitute for another portable tank that meets the requirements of the HMR at 49 CFR 173.32(b), and vice-versa. We propose making this change to align our regulations with the HMR, which allows for substitutions of portable tanks.

This section would also be amended to update the citation to Table "Certain Hazardous Materials Authorized for Transfer To and From Portable Tanks" to reflect the redesignation of this section from § 98.30-5 to § 98.30-7. This section would also be amended to expand the list of hazardous materials that are eligible for transfer to and from portable tanks because these materials have been

previously authorized for such transfers by the Coast Guard on an individual basis in accordance with proposed redesignated § 98.30-7(a)(5). We propose to add the following hazardous materials to Table 98.30-7(a): 1) Liquid Nitrogen, 2) Mixtures of hydrochloric acid and hydrofluoric acid containing not more than 24% hydrochloric acid or 6% hydrofluoric acid, and 3) corrosive liquid, toxic, N.O.S. (mixtures of hydrochloric acid, hydrofluoric acid, and fluoboric acid), UN 2922, packing group II, containing not more than 11% hydrofluoric acid. We are adding these materials because we believe these materials are safe to transport within the guidelines set by 46 CFR subpart 98.30 based on previous written authorizations of approval for these materials.

Sec. 98.30-8: Materials authorized for transfer to and from an IBC.

The addition of this section would be used to identify materials that are authorized for transfer to and from an IBC. We propose to allow the use of hazardous materials listed in Table 98.30-7(a) for transfer to and from an IBC with the exception of Liquid Nitrogen. Liquid Nitrogen cannot be properly stored or monitored in an IBC because of its design characteristics; therefore, we deem it unsafe to transport Liquid Nitrogen on an IBC.

Sec. 98.30-12 Stowage of portable tanks and IBCs.

This section would be amended to clarify that IBCs must be secured in accordance with the HMR at 49 CFR 176.74.

Sec. 98.30-13: Pipe connections, and filling and discharge openings.

This section would be amended to take into account the addition of IMO Type 1 and IMO Type 2 portable tanks, UN portable tanks, and IBCs as specified in 49 CFR 178.705. This section is also amended to restrict the use of manifolds, which are chambers or systems of pipes having several outlets in which a liquid or gas can be gathered or from which a liquid or gas can be distributed. Manifolds would be prohibited because the use of a manifold is a manual operation and the emergency shutoff during the transfer to and from a portable tank or IBC should be automatic. This would minimize the loss of hazardous materials in the event of an emergency, thereby reducing risk to health and environment.

Sec. 98.30-16 Requirements for ships carrying NLSs in portable tanks and IBCs.

This section would be amended to clarify that IBCs used to transport noxious liquid substances (NLS) must meet the requirements set forth in 46 CFR 125.120.

B. Subpart 98.33—Portable Tanks and IBCs for Certain
Grade E Combustible Liquids and Other Regulated Materials

Sec. 98.33-1: Applicability.

This section would be amended to clarify that the Coast Guard would allow the transfer of certain low-hazard materials to and from DOT-specification 57 portable tanks constructed on or before October 1, 1996 or UN portable tanks. In addition, this section would be amended to update regulations now found at 49 CFR 173.32 in the HMR that pertain to the requirements for the use of portable tanks. This section would also be amended to add a citation reference to our regulations at 46 CFR 98.30-3(d), which pertain to the requirements for UN portable tanks.

This section would also be amended to allow the transfer of certain low-hazard materials to and from limited IBCs as described in 46 CFR 98.30-6.

Sec. 98.33-5: Portable tanks and IBCs authorized

Paragraph (b) is proposed to specify that for cargoes authorized in 46 CFR 98.33-3 to be transferred to and from IBCs, the IBCs must first meet the tank specifications outlined in 46 CFR 98.30-5.

V. Incorporation by Reference

Material proposed for incorporation by reference

appears in § 98.30-2. You may inspect this material at U.S. Coast Guard Headquarters where indicated under ADDRESSES. Copies of the material are available from the sources listed in § 98.30-2.

Before publishing a binding rule, we would submit this material to the Director of the Federal Register for approval of the incorporation by reference.

VI. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of these statutes or executive orders.

A. Executive Order 12866 and Executive Order 13563

Executive Orders 12866 ("Regulatory Planning and Review") and 13563 ("Improving Regulation and Regulatory Review") direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a "significant regulatory action"

under section 3(f) of Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget. A draft regulatory assessment follows:

This proposed rule would expand the list of portable tanks approved for hazardous material transfers to include UN portable tanks, including IMO Type 1 and IMO Type 2 portable tanks, and IBCs. It would also expand the list of allowed hazardous materials. Please reference Table IV.A.1 below for a summary of our analysis.

Table IV.A.1: Summary of Affected Population, Cost Savings, and Benefits:

Category	Estimate
Affected Population	402 owners and operators of 1,334 OSVs
Cost Savings (7% discount over 10-year period)	\$55,467
Benefits	<ul style="list-style-type: none"> • Efficiency gains to industry by increasing the number of pre-approved types of portable tanks and expanding the list of pre-approved hazardous materials they can transport. • Reduces regulatory burden to industry and government by reducing the number of special permits or Competent Authority Approvals to be processed and harmonizing the Coast Guard regulations with PHMSA's HMR regulations.

Note: There are only cost savings associated with this rulemaking.

Affected Population

The total number of affected vessels is the 1,334 U.S.-flagged OSVs subject to 46 CFR subchapters I, L, or T. Table IV.A.2 presents the count of OSVs by subchapter.

Table IV.A.2: Affected OSVs by Subchapter

Subchapter Code	Subchapter Description	Count
I	Cargo and Miscellaneous Vessels	532

L	Offshore Supply Vessels	529
T	Small Passenger Vessels (Under 100 Gross Tons)	273
Total		1,334

We estimate that there are approximately 86,100² portable tanks and IBCs in the United States available for use by all modes of transportation, based on information from the Department of Transportation (DOT), Information Collection Request (ICR) (OMB Control No. 2137-0018), Inspection and Testing of Portable Tanks and Intermediate Bulk Containers. This ICR also reports that there are approximately 8,770 entities that handle these 86,100 portable tanks at an average of 9.8 tanks per entity (86,100 tanks / 8,770 reporting entities).

Within the maritime mode, portable tanks and IBCs are used by OSVs to transport hazardous materials to and from offshore platforms involved in the exploration and production of oil and natural gas. We estimate that the 1,334 OSVs are owned by 402 companies³.

Our estimates are based on the number of portable

² US Department of Transportation: Inspection and Testing of Portable Tanks and Intermediate Bulk Containers (OMB: 2137-0018)

³ Of the 1,334 OSVs in the affected population, MISLE reports ownership of 1,125, leaving 209 vessels with unidentified ownership (1,334-1,125). The MISLE data for the 1,125 vessels with ownership data shows that the average fleet size is 3.3 vessels per company. Applying that average fleet size to the 209 vessels without ownership data yields 63 companies (209 / 3.3). The estimated company population is 402 companies (339 identified + 63 imputed).

tanks provided in the aforementioned ICRs. For special permits, the applicant only specifies the mode, or multiple modes, of transportation, such as motor vehicle, rail, or cargo vessel, that will be authorized by the permit. For maritime-related permits, detail data of the industry, vessel type, or vessel level is not submitted. Therefore, we apply the cross-industry average of 9.8 tanks per entity, as described above, to estimate the total number of portable tanks subject to this rulemaking. With those inputs, we estimate that approximately 15 percent of all the affected portable tanks are used by OSV owners and operators $((1,334 \text{ OSVs} * 9.8 \text{ tanks per OSV})/86,100)$.

We request comments specifically on the accuracy of our estimate as well as additional information that could improve the estimated number of 9.8 tanks per OSV.

Current Industry Practice

The current Coast Guard-approved portable tanks are Intermodal (IM) 101s and 102s. As discussed in the Background section in this NPRM, portable tank manufacturers, reacting to the harmonization of PHMSA's HMR regulations with international standards established in 2003, are no longer manufacturing IM 101 and IM 102 portable tanks. However, IM 101 and IM 102 portable tanks that were manufactured and approved by PHMSA before January

1, 2003, may continue to be used in transportation. Under 49 CFR part 180, subpart G, the IM 101 and IM 102 portable tanks must be inspected every 2½ years and the results of the inspection must be recorded on a tag attached to each tank. Portable tanks that fail inspection must either be repaired and pass a second inspection or be removed from service. Over time, the supply of approved IM 101 and IM 102 portable tanks will diminish as the current stock either fails inspection or is withdrawn from service because of loss or damage. Owners of these tanks, who want to maintain their level of activity in the market, will need to replace their old tanks with IMO Type 1 or IMO Type 2 portable tanks, UN portable tanks, or IBCs, as IM 101 and IM 102 tanks will no longer be available on the market.

Under the current Coast Guard regulations, owners wishing to replace a lost IM 101 or IM 102 portable tank with an IMO Type 1 or IMO Type 2 portable tank, a UN portable tank, or an IBC must apply to PHMSA's AAHMS for a special permit or Competent Authority Approval.

Cost Savings

The Coast Guard analyzed the economic impact of the proposed rule in these three areas: 1) expansion of the list of allowed portable tanks, 2) expansion of the list of allowed hazardous materials, and 3) inspection and tagging.

The Coast Guard concluded that the proposed rule would impose no additional costs and would produce cost savings. In the sections below we present our analysis of these areas and a summary of the analysis.

1) Expansion of the list of allowed portable tanks.

As presented earlier, in the absence of the proposed rule, as IM 101 and IM 102 portable tanks are phased out, vessel owners or operators would need to obtain special permits or a Competent Authority Approval in order to replace them with IMO Type 1 or IMO Type 2 portable tanks, UN portable tanks, or IBCs.

The DOT's ICR for Inspection and Testing of Portable Tanks and Intermediate Bulk Containers (OMB Control Number: 2137-0018) estimates that 300 tanks are manufactured each year that are on the list of portable tanks approved by DOT for transport. This proposed rule would approve the use of these tanks for transfer of hazardous materials to and from OSVs. Therefore, we use this figure as the basis for estimating the number of tanks that would require special permits or Competent Authority Approvals per year. Applying the 15 percent share of the population as calculated above, yields an estimate of 45 portable tanks and IBCs obtained annually by the OSV industry. As stated above, each OSV handles approximately 9.8 tanks. Applying

this to the annual number of replacement tanks yields an average of 5 special permit or Competent Authority Approval requests for unapproved portable tanks by OSV per year (45 tanks / 9.8 tanks per OSV).

We used a 10-year forecast for our analysis. As the current rule has been in effect since 2003, we assume that we can project the annual estimate forward for the entire 10-year period. Our baseline then is 5 special permits or Competent Authority Approval per year for unapproved portable tanks for a total of 50 over the forecast period.

In the absence of the proposed rule, OSV owners would need to apply to PHMSA's AAHMS for a special permit or Competent Authority Approval to use an IMO Type 1 or IMO Type 2 portable tank, UN portable tank, or IBC to replace the lost IM 101 and IM 102 portable tanks. PHMSA estimates that the cost to industry to prepare the special permit or Competent Authority Approval is \$1,010⁴. By allowing this replacement by rulemaking, instead of by special permit or Competent Authority Approval, the proposed regulation would save industry \$5,050 annually (5 permits * \$1,010 unit cost). Therefore, the 10-year cost savings related to the reduction of special permits or Competent Authority Approval is estimated at \$50,500, undiscounted.

⁴ US Department of Transportation: Inspection and Testing of Portable Tanks and Intermediate Bulk Containers (OMB: 2137-0018)

2) Expansion of the list of allowed hazardous materials.

The list of hazardous materials currently approved for transport in portable tanks is found in existing 46 CFR 98.30-5. Currently, vessels wishing to transport a material not on this list must apply to PHMSA's AAHMS for a special permit or Competent Authority Approval. Under the proposed rule, the three groups of materials referenced in proposed redesignated 46 CFR 98.30-7 would be added to the list of allowed materials.

Based on information provided in the DOT ICR (OMB Control Number: 2137-0051) Rulemaking, Special Permits, and Preemption Requirements, there are approximately 144 special permit or Competent Authority Approval requests per year. OSV owners and operators account for approximately 4.6% of the entities owning portable tanks and IBCs (402/8,770). Therefore, the total number of special permit or Competent Authority Approval requests per year for unapproved hazardous materials is estimated at 7 (4.6 percent of 144 requests).

Based on the same ICR, the administrative costs to prepare a special permit or Competent Authority Approval

request is estimated at \$1,010⁵. Special permits or Competent Authority Approvals need to be renewed every two to five years, depending on the hazardous material. For the purpose of this analysis, we assume special permits or Competent Authority Approvals would need to be renewed four times over the 10-year period, with renewals starting in years 1, 4, 7, and 10. Therefore, vessels not needing to file the 7 special permits or Competent Authority Approvals would acquire total costs savings of \$7,070 (\$1,010 unit cost * 7 Approvals) four times over the 10-year period of analysis for a total of \$28,280, undiscounted.

3) Inspection and tagging.

The existing inspection and tagging regime is based on 2½-year inspection cycles. The proposed rule would continue using that system for IMO Type 1 and IMO Type 2 portable tanks, UN portable tanks and IBCs. Thus, the proposed rule would not impose any additional regulatory burdens in the area of inspection and tagging.

Summary of Cost Savings

As discussed above, there are no additional costs for inspection and tagging. The other two areas we analyzed,

⁵ US Department of Transportation: Rulemaking, Special Permits and Preemption Requirements (OMB Control No. 2137-0051)

expansion of the list of allowed portable tanks and expansion of the list of allowed hazardous materials, showed cost savings.

Table IV.A.3 presents the undiscounted cost savings of these two areas over the 10-year forecast period.

Table IV.A.3: Summary of Undiscounted Cost Savings

	Special Permit or Competent Authority Approval	Expansion of List of Hazardous Materials	Total
Year	Savings	Savings	Savings
1	\$5,050	\$7,070	\$12,120
2	\$5,050	\$0	\$5,050
3	\$5,050	\$0	\$5,050
4	\$5,050	\$7,070	\$12,120
5	\$5,050	\$0	\$5,050
6	\$5,050	\$0	\$5,050
7	\$5,050	\$7,070	\$12,120
8	\$5,050	\$0	\$5,050
9	\$5,050	\$0	\$5,050
10	\$5,050	\$7,070	\$12,120
Total	\$50,500	\$28,280	\$78,780

Table IV.A.4 presents the costs savings schedule at discounted rates of 7 percent and 3 percent.

Table IV.A.4: Schedule of Discounted Cost Savings

	Total		
Year	Savings	7%	3%
1	\$12,120	\$11,327	\$11,767
2	\$5,050	\$4,411	\$4,760
3	\$5,050	\$4,122	\$4,621
4	\$12,120	\$9,246	\$10,768
5	\$5,050	\$3,601	\$4,356
6	\$5,050	\$3,365	\$4,229
7	\$12,120	\$7,548	\$9,855
8	\$5,050	\$2,939	\$3,987
9	\$5,050	\$2,747	\$3,870
10	\$12,120	\$6,161	\$9,018
Total	\$78,780	\$55,467	\$67,231
Annualized		\$7,897	\$7,882

At a 7 percent discount rate, the net savings is \$55,467 across the 10-year estimate period and \$7,882 annualized.

Benefits

The proposed rule would provide greater flexibility to industry by increasing the number of approved types of portable tanks available for use and increasing the list of pre-approved hazardous materials they can transport. The elimination of the special permits or Competent Authority Approvals would provide efficiency gains to industry by reducing or removing the time associated with preparing a special permit or Competent Authority Approval request and waiting for its return prior to engaging in business

activities. The removal of the time burden associated with administrative procedures for special permit or Competent Authority Approval applications would facilitate quicker interactions between vessel operators and the manufacturers and lessors of the approved portable tanks. Government would also benefit from the reduced number of special permits or Competent Authority Approvals to process. We also expect an increase in regulatory efficiency, as we are harmonizing our regulations with international standards.

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Entities are categorized by the North American Industry Classification System (NAICS) codes⁶. By using the United States Small Business Administration (SBA) criteria for small businesses, the associated NAICS codes, and the

⁶ Small business information can be accessed online at <http://www.sba.gov/size/indextableofsize.html>.

2007 United States Economic Census data⁷, we are able to provide an overview of the OSV industry. We reviewed the vessel ownership data used in the cost analyses and determined that all of the owners of the OSVs are businesses, that is, none are owned by not-for-profit organizations or governments. OSVs can be classified under "Navigational Services to Shipping" (488330) and "Natural gas liquid extraction" (211112) industries. These industries engage in a wide range of navigational shipping services including cargo salvaging and oil recovery⁸. According to the aforementioned U.S. Census Bureau data, approximately 85 percent of entities classified as "Navigational Services to Shipping" are considered small⁹. One hundred percent of entities classified as "Natural gas liquid extraction" are considered small, as there are no entities exceeding the 500 employee SBA size standard.

The Coast Guard expects that this proposed rule would not have a significant economic impact on small entities. Furthermore, as described in the "Executive Order 12866 and Executive Order 13563" section, we do not expect this

⁷ U.S. Census Bureau information can be accessed online at http://factfinder.census.gov/servlet/DatasetMainPageServlet?_program=ECN&_tabId=ECN1&_submenuId=datasets_4&lang=en&ts=246366688395.

⁸ NAICS definitions can be accessed online at <http://www.census.gov/econ/industry/def/d488330.htm> and <http://www.census.gov/econ/industry/def/d211112.htm>, respectively.

⁹ 85% of these entities meet the \$7 million in annual revenue SBA size standard.

proposed rule to result in additional costs to industry. This proposed rule would reduce regulatory burdens by eliminating the need for special permits or Competent Authority Approvals for the specified portable tanks and hazardous materials and thus generate an annual net savings to the industry. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under ADDRESSES. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning

its provisions or options for compliance, please consult LT Elizabeth Newton, Office of Hazardous Material Standards, Coast Guard; telephone 202-372-1419, e-mail Elizabeth.J.Newton@uscg.mil. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

D. Collection of Information

This proposed rule would call for a modification to an existing collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). It would modify existing Office of Management and Budget (OMB) Collection of Information: OMB Control Number 2137-0051, "Rulemaking, Special Permits, and Preemption Requirements."

As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping,

monitoring, posting, labeling, and other similar actions. The title and description of the information collection, a description of those who must collect the information, and an estimate of the change in annual burden follow. The estimate covers the time for preparing or renewing special permit or Competency Authority Approval requests for carrying hazardous materials.

TITLE: Rulemaking, Special Permits, and Preemption Requirements

OMB CONTROL NUMBER: 2137-0051

This collection of information applies to rulemaking procedures regarding PHMSA's HMR regulations. Specific areas covered in this information collection include 49 CFR Part 105, Subpart A and Subpart B, "Hazardous Materials Program Definitions and General Procedures;" 49 CFR Part 106, Subpart B, "Participating in the Rulemaking Process;" 49 CFR Part 107, Subpart C, "Preemption;" and 49 CFR Part 107, Subpart H, "Approvals, Registrations and Submissions." The proposed rule would expand the types of allowed portable tanks and expand the list of allowed hazardous materials permitted in those tanks. Under current regulations, the use of these tanks or the transfer of the hazardous materials specified in the proposed rule would require a special permit or Competent Authority Approval

from PHMSA's AAHMS. If the proposed rule becomes effective, these special permits or Competent Authority Approvals would no longer be needed. Eliminating these special permits or Competency Authority Approvals would reduce the burden associated with the OMB Control Number 2137-0051 by reducing the number of respondents, responses, and burden hours associated with special permit or Competency Authority Approval requests. We contacted DOT regarding this collection of information. They validated our methodology and concurred that this proposed rulemaking would impact the referenced ICR. However, they will defer any adjustments to the ICR until the final rule is published.

SUMMARY OF COLLECTION OF INFORMATION: The proposed rule would impact the burden associated with 49 CFR Part 107, Subpart H, "Approvals, Registrations and Submissions." The proposed rule would eliminate the need for special permit or Competent Authority Approval applications and therefore reduce the burden associated with that part of the collection. As previously stated, we contacted DOT regarding this collection of information.

NEED FOR INFORMATION: Special permit or Competent Authority Approval procedures provide the information required for analytical purposes to determine if the

requested relief provides for a comparable level of safety as provided by PHMSA's HMR regulations.

PROPOSED USE OF INFORMATION: The information collected under this ICR is used in the review process by PHMSA in determining the merits of the petitions for rulemakings and for reconsideration of rulemakings, as well as applications for special permits or Competent Authority Approvals, preemption determinations and waivers of preemption determinations. This rulemaking would affect special permit or Competent Authority Approval requests, which PHMSA's AAHMS would need to determine the merits and use of the unallowed tanks.

DESCRIPTION OF RESPONDENTS: The respondents impacted by this proposed rule are owners and operators of OSVs requesting the use of unauthorized portable tanks as well as owners and operators of OSVs requesting approval to transport unauthorized hazardous material.

NUMBER OF RESPONDENTS: The number of respondents affected by this ICR is 8,770. The number of respondents impacted by this proposed rule would be 402 owners and operators of OSVs.

FREQUENCY OF RESPONSE: Without the proposed rule, we estimate each respondent would have to provide a response every 2-5 years or one response per ICR renewal cycle.

BURDEN OF RESPONSE: The savings in burden hours per request is estimated at 5.5 hours (five-hour special permit or Competent Authority Approval requests + 0.5-hour recordkeeping).

ESTIMATED TOTAL ANNUAL BURDEN: Currently, the ICR annual hour burden is 4,219, of which 792 hours are the result of 144 special permit or Competent Authority Approval requests per year. As IM 101 and IM 102 portable tanks phase out, we expect an additional 5 special permits or Competent Authority Approvals per year over the three year ICR renewal period. This would add 27.5 future burden hours per year to the current 4,219 approved hourly estimate. As this proposed rule would eliminate the need for these special permit or Competent Authority Approval requests, it would eliminate the future burden by 27.5 hours per year. We estimate that expanding the list of hazardous materials approved for transfer to and from the specified portable tanks and IBCs would eliminate the filing of 7 special permits or Competent Authority Approvals per 3-year ICR renewal cycle. At 5.5 hours per special permit or Competent Authority Approval, this would be an additional reduction of 38.5 hours of regulatory burden per 3-year period. We are communicating with DOT regarding current estimates of special permit or Competent Authority Approval

requests and the associated burden hours.

REASON FOR PROPOSED CHANGE: The proposed rule would eliminate the need for special permit or Competent Authority Approval requests for unauthorized portable tanks and IBCs as well as the unauthorized transport of hazardous materials.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we will submit a copy of this proposed rule to the OMB for its review of the collection of information.

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the

expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

H. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

K. Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866, as supplemented by Executive Order 13563, and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

L. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule uses the following voluntary consensus standard: International Maritime Dangerous Goods Code (IMDG) 2010 Edition, Amendment 35-10, Section: 4.2.0.1. The proposed sections that reference this standard and the locations of this standard are listed in proposed 46 CFR 98.30-2.

If you disagree with our use of the voluntary consensus standard listed above or are aware of voluntary consensus standards that might apply but are not listed, please send a comment to the docket using one of the methods under ADDRESSES. In your comment, please explain

why you disagree with our use of this standard and/or identify voluntary consensus standards the Coast Guard has not listed that might apply.

M. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under the "Public Participation and Request for Comments" section of this preamble. This action falls under section 2.B.2, figure 2-1, paragraph (34) (d) and (e) of the Instruction and under section 6(a) of the "Appendix to National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy" (67 FR 48243, July 23, 2002). This proposed rule involves regulations concerning equipping of vessels, regulations concerning equipment approval and carriage requirements, and regulations concerning vessel

operation safety standards. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 46 CFR Part 98

Cargo vessels, Hazardous materials transportation, Incorporation by Reference, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR part 98 as follows:

PART 98--SPECIAL CONSTRUCTION, ARRANGEMENT, AND OTHER PROVISIONS FOR CERTAIN DANGEROUS CARGOES IN BULK

1. The authority citation for part 98 continues to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3306, 3307, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

Subpart 98.30--Portable Tanks and Intermediate Bulk Containers

2. Revise the heading for subpart 98.30 to read as set forth above.

3. Amend § 98.30-1 as follows:

a. In paragraph (a), after the words "portable tanks", add the words "and Intermediate Bulk Containers (IBCs)";

b. In paragraph (b) introductory text, after the words "portable tanks", add the words "and IBCs";

c. In paragraph (b) (1), remove ";" and add, in its place, ".";

d. Revise paragraphs (b) (2) and (3); and

e. Add paragraph (b) (4).

The revisions and addition read as follows:

§ 98.30-1 Applicability.

* * * * *

(b) * * *

(2) An IM 101, IM 102, IMO Type 1, IMO Type 2, or UN portable tank.

(3) A portable tank authorized for hazardous materials by the Associate Administrator for Hazardous Materials Safety (AAHMS) of the Pipeline and Hazardous Materials Safety Administration (PHMSA), under a special permit or Competent Authority Approval issued in accordance with 49 CFR part 107, subpart H.

(4) An IBC, but restricted to those metal IBCs as described in § 98.30-5 of this subpart.

§ 98.30-17 [Redesignated as § 98.30-18]

4. Redesignate § 98.30-17 as § 98.30-18.

§§ 98.30-13 through 98.30-15 [Redesignated as §§ 98.30-15 through 98.30-17]

5. Redesignate §§ 98.30-13 through 98.30-15 as §§ 98.30-15 through 98.30-17, respectively.

§§ 98.30-6 through 98.30-11 [Redesignated as §§ 98.30-9 through 98.30-14]

6. Redesignate §§ 98.30-6 through 98.30-11 as §§ 98.30-9 through 98.30-14, respectively.

§ 98.30-5 [Redesignated as § 98.30-7]

7. Redesignate § 98.30-5 as § 98.30-7.

§§ 98.30-2 through 98.30-4 [Redesignated as §§ 98.30-3 through 98.30-5]

8. Redesignate §§ 98.30-2 through 98.30-4 as §§ 98.30-3 through 98.30-5, respectively.

9. Add new § 98.30-2 to read as follows:

§ 98.30-2 Incorporation by Reference.

(a) Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the Federal Register and the material must be available to the public. All approved material is available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG-521), 2100 2nd St. SW, Stop 7126, Washington, DC 20593-7126, and is available from the

sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030 or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(b) International Maritime Organization (IMO), 4 Albert Embankment, London SE1 7SR, United Kingdom, <http://www.imo.org>.

(1) International Maritime Dangerous Goods (IMDG) Code, 2010 Edition Incorporating Amendment 35-10 Section: 4.2.0.1, IBR approved for §§ 98.30-3 and 98.30-5.

(2) [Reserved]

10. Revise newly redesignated § 98.30-3 to read as follows:

§ 98.30-3 Definitions.

(a) IM 101 portable tank and IM 102 portable tank means a portable tank constructed and approved by PMSA and manufactured on or before January 1, 2003, that meets the requirements for continued use under 49 CFR 173.32.

(b) IMO Type 1 portable tank and IMO Type 2 portable tank means a portable tank constructed in accordance with Amendment 35-10 to the International Maritime Dangerous Goods (IMDG) Code (incorporated by reference, see § 98.30-

2) and approved on or before July 1, 2003, that meets the provisions for continued use under the IMDG Code.

(c) MPT means a marine portable tank that was inspected and stamped by the Coast Guard on or before September 30, 1992, and that meets the applicable requirements in this part and part 64 of this chapter.

(d) UN portable tank means a portable tank constructed in accordance with 49 CFR 178.274 and 178.275, and approved in accordance with 49 CFR 173.32 and 178.273.

(e) IBC means an intermediate bulk container as defined in 49 CFR 171.8.

11. In newly redesignated § 98.30-5:

a. Revise paragraphs (a)(1), (a)(2) introductory text, and (a)(2)(i);

b. In paragraph (a)(2)(ii), remove the word "exemption" and add in its place the words "special permit";

c. Revise paragraph (b);

d. Redesignate paragraph (c) as paragraph (d) and revise it; and

e. Add new paragraph (c).

The revisions and addition read as follows:

§ 98.30-5 Vessels carrying portable tanks other than MPTs.

(a) * * *

(1) An IM 101, IM 102, IMO Type 1, IMO Type 2, or UN portable tank authorized for its contents in accordance with 49 CFR 172.101, Hazardous Materials Table, Columns 7 and 8C.

(2) A portable tank authorized by PHMSA's AAHMS under a special permit or Competent Authority Approval issued in accordance with 49 CFR part 107, subpart H.

(i) According to the terms of the special permit or Competent Authority Approval, equivalent to an IM 101, IM 102, IMO Type 1, IMO Type 2, or UN portable tank.

* * * * *

(b) Each IM 101, IM 102, or UN portable tank must be tested and inspected in accordance with 49 CFR part 180, subpart G and follow specifications in accordance with 49 CFR 178.275(c).

(c) Each IMO Type 1 or IMO Type 2 portable tank must be tested and inspected in accordance with Amendment 35-10 to the IMDG Code (incorporated by reference, see § 98.30-2).

(d) Each portable tank authorized under a special permit or Competent Authority Approval from PHMSA's AAHMS must be inspected, tested, maintained, and used in accordance with the terms of that special permit or Competent Authority Approval.

12. Add new § 98.30-6 to read as follows:

§ 98.30-6 Vessels carrying IBCs.

Intermediate Bulk Containers (IBCs) with a classification of 31A may be used on a vessel to which this part applies and must meet at a minimum the following constructional requirements:

- (a) The shell thickness must be a minimum 6.36 mm (0.25 inches) in reference steel.
- (b) There must be a self-closing relief valve set to open at no less than 5 psig.
- (c) Closures used on fill openings, in excess of 20 square inches, must be equipped with a device to prevent them from fully opening without first relieving internal pressure.
- (d) All venting requirements must be followed in accordance with 49 CFR 178.345-10, Table 1.

13. In newly redesignated § 98.30-7:

- a. In paragraph (a)(1), remove the words "or "ORM-E"" and add in their place the words ""hazardous substance", or "hazardous waste"";
- b. Revise paragraph (a)(2)(iii);
- c. In paragraph (a)(3), after the words "material listed in", add the words "Table 98.30-7(a)--Certain

Hazardous Materials Authorized For Transfer To and From
Portable Tanks”;

d. Remove Table 98.30-5(a) and add Table 98.30-7(a)
in its place; and

e. Revise paragraphs (b), (e), and (f).

The revisions and addition to read as follows:

**§ 98.30-7 Materials authorized for transfer to and from a
portable tank.**

(a) * * *

(2) * * *

(iii) Is authorized for transport in an IM 101, IM
102, IMO Type 1, IMO Type 2, or UN portable tank under
subpart F of 49 CFR part 173;

* * * * *

**Table 98.30-7(a)—Certain Hazardous Materials Authorized For
Transfer To and From Portable Tanks**

Acetone
Alcohols; flash point of 80 °F (27 °C) or less by open- cup test
Benzene
Gasoline

Liquid Nitrogen
Mixtures of Hydrochloric acid and hydrofluoric acid containing not more than 36 percent hydrochloric acid or 2 percent hydrofluoric acid ¹
Methyl Ethyl Ketone
Mixtures of hydrochloric acid and hydrofluoric acid containing not more than 24 percent hydrochloric acid or 6 percent hydrofluoric acid ¹
Toluene (Toluol)
Corrosive liquid, toxic, N.O.S. (Mixtures of hydrochloric acid, hydrofluoric acid, and fluoboric acid), UN 2922, packing group II, containing not more than 11 percent hydrofluoric acid ¹

Note: ¹Each MPT must be lined with rubber or with material equally acid-resistant and equally strong and durable.

(b) Grade D and Grade E combustible liquids with a flashpoint of 100°F (38°C) or higher by closed cup test that are not listed by name in the Hazardous Materials Table of 49 CFR 172.101 may be transferred to and from an MPT, IM 101, IM 102, IMO Type 1, IMO Type 2, or UN portable tank conforming to the T Code "T1" specified in 49 CFR 172.102(c)(7)(i).

* * * * *

(e) Environmentally hazardous substances (see paragraph (a)(4) of this section) may be transferred only to and from an MPT, IM 101, IM 102, IMO Type 1, IMO Type 2, or UN portable tank.

(f) A portable tank authorized for transfer of hazardous material in this section may be substituted by another portable tank in accordance with 49 CFR 173.32(b).

* * * * *

14. Add new § 98.30-8 to read as follows:

§ 98.30-8 Materials authorized for transfer to and from an IBC.

Any hazardous material listed in Table 98.30-7(a) of § 98.30-7 of this subpart may be transferred to and from an IBC under this subpart, with the exception of Liquid Nitrogen.

15. Revise newly redesignated § 98.30-9 to read as follows:

§ 98.30-9 Lifting a portable tank or IBC.

No person may lift a portable tank and/or IBC with another portable tank and/or IBC.

§ 98.30-10 [Amended]

16. In newly redesignated § 98.30-10, after the words "portable tank", add the words "or IBC".

17. In newly redesignated § 98.30-12:

a. Revise the section heading;

b. In paragraph (a), after the words "portable tank", add the words "and/or IBC";

c. In paragraph (b) introductory text, after the words "portable tank", add the words "and/or IBC"; and

d. Add paragraph (c).

The revision and addition read as follows:

§ 98.30-12 Stowage of portable tanks and IBCs.

* * * * *

(c) All IBCs must be secured as specified in 49 CFR 176.74.

18. In newly redesignated § 98.30-13:

a. Redesignate the introductory text, paragraph (a), and paragraph (b) as paragraphs (a) introductory text, (a)(1), and (a)(2), respectively;

b. In newly redesignated paragraph (a) introductory text, after the words "portable tank", add the words "or IBC";

- c. Revise redesignated paragraph (a)(1); and
- d. Add paragraphs (a)(3) and (b).

The revision and additions read as follows:

§ 98.30-13 Pipe connections, and filling and discharge openings.

(a) * * *

(1) For an IM 101, IM 102, IMO Type 1, IMO Type 2, or UN portable tank, the closures specified in 49 CFR 178.275.

* * * * *

(3) For an IBC, the closures specified in 49 CFR 178.705.

(b) A manifold cannot be used when transferring a hazardous material to or from a portable tank or IBC on board a vessel.

§ 98.30-15 [Amended]

19. In redesignated § 98.30-15(a), after the words "portable tank", add the words "or IBC".

20. In newly redesignated § 98.30-16:

- a. Revise the section heading;
- b. In paragraph (a) introductory text, remove the word "shall" and add in its place the word "must"; and
- c. Add paragraph (c).

The revision and addition read as follows:

§ 98.30-16 Requirements for ships carrying NLSs in portable tanks and IBCs.

* * * * *

(c) Any ship that carries NLSs in an IBC, as described in section 98.30-5 of this subpart, must meet all requirements in accordance with 46 CFR 125.120.

§ 98.30-18 [Amended]

21. In newly redesignated § 98.30-18:

a. In paragraph (a) remove the word "shall" and add, in its place, the word "must", and after the words "portable tank", add the words "or IBC"; and

b. In paragraph (b) introductory text, after the words "portable tank", add the words "or IBC", and remove the word "shall", and add, in its place, the word "must".

§ 98.30-19 [Amended]

22. In § 98.30-19, in paragraphs (b) and (c), after the words "portable tank", add the words "or IBC".

§ 98.30-21 [Amended]

23. In § 98.30-21, in the introductory text and paragraphs (b) and (c), after the words "portable tank", add the words "or IBC".

§ 98.30-23 [Amended]

24. In § 98.30-23, in the introductory text, after the words "portable tank", add the words "or IBC".

§ 98.30-25 [Amended]

25. In § 98.30-25, after the words "portable tank", add the words "or IBC".

§ 98.30-27 [Amended]

26. In § 98.30-27, in paragraph (a) introductory text, remove the word "shall" and add, in its place, the word "must".

§ 98.30-29 [Amended]

27. In § 98.30-29, after the words "portable tank", add the words "or IBC".

§ 98.30-31 [Amended]

28. In § 98.30-31, in the introductory text, after the words "portable tank or", add the words "IBC or"

§ 98.30-33 [Amended]

29. In § 98.30-33, in paragraph (a) introductory text and paragraph (b), after the words "portable tank", add the words "or IBC".

§ 98.30-35 [Amended]

30. In § 98.30-35, after the words "portable tank", add the words "or IBC".

§ 98.30-37 [Amended]

31. In § 98.30-37, in the introductory text, after the words "portable tank or", add the words "or IBC".

Subpart 98.33-- Portable Tanks and IBCs for Certain Grade E Combustible Liquids and Other Regulated Materials

32. Revise the heading for subpart 98.33 to read as set forth above.

33. In § 98.33-1:

a. Revise paragraph (b)(1) (including removal of the note);

b. Amend paragraph (b)(2) by removing “; and” and adding in its place “.”; and

c. Add paragraph (b)(4).

The revision and addition read as follows:

§ 98.33-1 Applicability.

* * * * *

(b) * * *

(1) A DOT-specification 57 portable tank constructed on or before October 1, 1996, or a UN portable tank (see 49 CFR 173.32 and § 98.30-3(d) of this part).

* * * * *

(4) An Intermediate Bulk Container (IBC), but restricted to those metal IBCs as described in § 98.30-5 of this subpart.

§ 98.33-3 [Amended]

34. In § 98.33-3, in the introductory text, after the words “portable tanks”, add the words “or IBCs”.

35. In § 98.33-5:

a. Revise the section heading;

b. Redesignate the introductory text, paragraph (a), and paragraph (b) as paragraphs (a), (a)(1), and (a)(2), respectively; and

c. Add new paragraph (b).

The revision and addition read as follows:

§ 98.33-5 Portable tanks and IBCs authorized.

* * * * *

(b) The cargoes authorized under § 98.33-3 may be transferred to and from IBCs to which this subpart applies if the IBCs meet the requirements in § 98.30-5 of this part.

§ 98.33-7 [Amended]

36. In § 98.33-7, after the words "portable tank", add the words "or IBC".

§ 98.33-9 [Amended]

37. In § 98.33-9, after the words "portable tank", add the words "or IBC".

§ 98.33-11 [Amended]

38. In § 98.33-11, in paragraphs (a) and (b), after the words "portable tank", add the words "or IBC".

§ 98.33-13 [Amended]

39. In § 98.33-13, after the words "portable tank", add the words "or IBC".

§ 98.33-15 [Amended]

40. In § 98.33-15, in the introductory text, after the words "portable tank", add the words "or IBC".

Dated: February 10, 2012

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[FR Doc. 2012-5551 Filed 03/08/2012 at 8:45 am; Publication Date: 03/09/2012]